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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052897
Party	Plaintiff Thomas Skold
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Date	07/01/2013
Attachments	Reply In Support X Motion Partial Summary Judgment_To Strike.pdf(146267 bytes) Exhibits20130701FilingSkold.pdf(4363597 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration Nos. 2985751; and 3394514

Dated: August 16, 2005 & March 11, 2008, Respectively

Thomas Sköld,)	
Petitioner)	
)	
v.)	
)	Cancellation No. 92052897
Galderma Laboratories, Inc.,)	
Registrant)	
)	

**REPLY IN SUPPORT OF PETITIONER'S CROSS MOTION FOR
PARTIAL SUMMARY JUDGMENT**

AND

MOTION TO STRIKE

Petitioner files herewith a Reply and a Motion to Strike, responsive to Registrant's Response in Opposition to Petitioner's Cross Motion for Partial Summary Judgment ("Registrant's Opposition"), filed 14 June 2013.

In Sections B, C, D and E, below, Petitioner seeks to write briefly to highlight a few points. For one, Petitioner feels compelled to address, in six short sentences in its Section B, Registrant's remarkable assertion that Petitioner's Cross Motion was untimely filed. Next, Section C deals with those parts of Registrant's brief that re-hash, in many guises (Sections IV and IV.B.), its over-interpretation of "public" use or sales. This misstatement of the law has been addressed in Petitioner's Brief in Opposition to

Registrant's Motion for Summary Judgment and Cross Motion for Partial Summary Judgment ("Petitioner's Opposition", 15 May 2013), but Petitioner concludes that it may be useful to add a few words on Registrant's citations, which do not stand for the asserted proposition. In Section D, Petitioner notes that the case law cited by Registrant misses the mark. Further, in Section E, Petitioner notes that Section IV.B. of Registrant's Opposition mis-characterizes the evidence before the Board.

First, however, in Section A, Petitioner notes that Section III of Registrant's Opposition relies upon evidence that is not properly before this tribunal, and should therefore be stricken.

A. Motion to Strike

Fed. R. Civ. P. 26(a)(1)(A)(iii) calls for providing "a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses * * *." The meaning of Fed. R. Civ. P. 26(a)(1)(A)(iii) is informed by Fed. R. Civ. P. (a)(3)(A)(iii), which talks of "an identification of each document * * * separately identifying those items the party expects to offer and those it may offer if the need arises." Moreover, FN 4 of Influence Inc. v. Zuker, 88 USPQ2d 1859, 1861 (TTAB 2008), clearly indicates that the disclosure will be of documents, not broad categories of documents.

Thus § 26(a)(1)(A)(iii) would have a party submit useful itemized information about documentary evidence. The "major purpose of the [1993] revision" to "accelerate the exchange of basic information about the case and to eliminate the paper work involved in requesting such information." Notes of Advisory Committee on Rules—1993

Amendment (re subdivision (a) of § 26). Consistent with that purpose, Petitioner submits that the 11th hour disclosure of Registrant's evidence of international trademark filings described on p. 5 of Registrant's Opposition is too late.

Exhibits 1 and 2 hereto are, respectively, Registrant's Rule 26(a)(1) disclosures and first amended such disclosures. Exhibit 2 is representative in stating the following generality, devoid of any useful information for evaluation:

2. The following categories of documents are In Registrant's possession at its offices, other locations owned or controlled by Registrant, or the offices of its counsel and may be used to support Registrant's claims and defenses:

a. Documents regarding the registration of Registrant's RESTORADERM marks; * * *

This lack of substantive compliance is further reflected in Registrants responses to requests for production attached hereto as Exhibits 3 – 5. It has been clear that Registrant would be utilizing this kind of evidence since it received Petitioner's Request for Admission No. 1. Registrant's response in its supplemental response (Exhibit 5), reads:

Registrant did not use the term Restoraderm in commerce in connection with any product prior to February 28, 2002.

Response: Subject to and without waiving the general objections, Registrant responds as follows: Admitted.

That Registrant had a duty to provide itemized documents indicative of the dating of foreign filings has been further clear since it made the following reply on 30 April 2012 to Request for Production No. 6 (Exhibit 3):

All documents Registrant intends to introduce into evidence in this proceeding.

Response: Registrant objects to this Request under T.B.M.P. §414(7) on the ground that a party is not obligated to specify the evidence or documents it intends to present in advance of trial. Registrant further objects to this Request on the ground that complete compliance with "all documents" is unduly burdensome.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Not one piece of documentary evidence, or one separately identified summary of a document, relevant to priority, was received by Petitioner from Registrant prior to the Letter of Intent ("Letter of Intent") attached as Exhibit A to the Declaration of Jake DeBoever to Registrant's reply in support for its motion for summary judgment, served 29 May 2013. (As that Letter of Intent document is remarkably helpful to Petitioner, he does not seek to have it stricken).

Registrant should not be allowed to selectively dribble out documents it was obligated to provide and itemized summary a year ago. Accordingly, Petitioner respectfully submits that it is appropriate for Registrant to be barred from using such late-disclosed evidence as the trademark registrations.

Registrant obviously intended to thumb its nose at the intent of the up-front disclosure rules and, even while it developed its case and knew much of the evidence it would rely upon, wait to the 12th hour, and "Defendant's Pretrial Disclosures" under Fed. R. Civ. P. (a)(3)(A)(iii), to make any meaningful disclosures. Registrant at the start of this proceeding asked Petitioner to waive Initial Disclosures. Petitioner declined. Registrant has sought by its actions to unilaterally waive Initial Disclosures. The Board should act to induce better compliance with the intent of the disclosure rules.

In refusing to answer Petitioner's Request for Production 6 (Exhibit 3), Registrant cited T.B.M.P. §414(7), which states that "a party is not required, in advance of trial, to disclose each document or other exhibit it plans to introduce" (emphasis added). The operative language in the Board's guidance is "each", obviously contemplating that a party may continue to develop its case and not be closed out from using its continued efforts at trial. T.B.M.P. §414(7) does not say that Fed. R. Civ. P. 26(a)(1)(A)(iii) is a dead letter. If Fed. R. Civ. P. 26(a)(1)(A)(iii) is treated as a dead letter, there should be some consequence. Since Registrant's discovery responses indicated that it had no evidence of earlier use, it should be bound by that indication. Accordingly, Petitioner submits that Section III of Registrant's Opposition, which is exclusively built on this improper evidence, should be stricken.¹

B. Asserted Untimely Filing; Section II of Registrant's Opposition

Registrant asserts that Petitioner's Cross Motion for Partial Summary Judgment was untimely. Yet Petitioner's testimony period has not begun. To argue, based some

¹ Moreover, given the lack of Registrant's disclosure, there may be evidence that would cast in doubt on assertions in Registrant's Opposition. See, Fed. R. Civ. P. 56(d).

abstract theory, that the testimony period began on 2 May 2013 strikes the undersigned as remarkably absurd. 37 CFR 2.127(e)(1) recites that its deadline is the first testimony period "as originally set or as reset." The Board would hardly want to suffer the waste of time of seeing this motion based on substantially the same body of facts when the period is officially reset. Moreover, a cross-motion for summary judgment is expressly contemplated as a response to a motion for summary judgment. T.B.M.P. §528.03.

C. Continued, Misleading Recitation of "Public";
Section IV of Registrant's Opposition

Registrant's brief does not acknowledge or address Petitioner's strong showing in Petitioner's Opposition that a trademark use must be "public" in that it is directed to impact on the relevant public. The phrase "open and public", said to be drawn from Simmons v. Western Publ'g Co., 834 F.Supp. 393, 397, 31 USPQ2d 1143, 1146 (N.D. Ga. 1993), is not remotely to be found there. The citation to McCarthy on Trademarks is defeated by the very parenthetical summary that Registrant draws from the citation, regarding public use ***before potential customers***. Oddly, Registrant cites § 19: 118 (4th ed., 2005) of McCarthy on Trademarks where (in the 2007 release of the 4th ed.) that section notes that the primary citation for the asserted point is McCarthy on Trademarks § 19: 115. That Section 19:115 is about sham sales, but includes, as the most relevant recitation, the observation that "an initial sale sufficient to furnish a foundation for federal registration had to be an 'open and notorious' sale so that ***some member*** of the purchasing group for whom the goods are intended was aware of the availability of the goods and the mark." Id. (emphasis added).

Here, the appropriate purchasing group was at most 15 companies for the services and product Petitioner offered. (See Sköld declaration filed as Ex. 4 with his

Petitioner's Opposition ("Sköld Declaration") at ¶14; see also Declaration of Jeffrey Day ("Day Declaration") filed as Ex. 6 with Petitioner's Opposition). Petitioner's evidence shows that he promoted his Restoraderm product and formulation services to 20% or more of that public. Sköld Declaration at ¶¶4 – 7; Day Declaration at ¶¶4 – 7. The sale of such services by Petitioner to Collagenex, Registrant's predecessor in interest, is shown for example by the Letter of Intent.

Registrant's further citations on "public" in its Section IV have been addressed (without rebuttal in Registrant's briefs) in Petitioner's Opposition. Registrant's citations in its Section IV.B. are much to the same effect as discussed above. The most precedential citation is Richardson-Vicks Inc. v. Franklin Mint Corp., 216 U.S.P.Q. 989, 991-92 (T.T.A.B. 1982). There, Franklin Mint had no real product. There was one token shipment, with an alleged "invoice" for \$1.27. Petitioner marketed a real product to 20% or more of the relevant market, and was paid in seven figures.

D. Petitioner's "Mode of Action" Document Distinct from the Facts of Cited Cases; Section IV.A. of Registrant's Opposition

It should be clear that Petitioner's business is nothing like the self-service gas business in Travelers Petroleum, Inc. v. Selfway Inc., 195 USPQ 578 (T.T.A.B. 1997). Petitioner was selling his formulation services and the topical formulation. Thus, when he presented the "Mode of Action" document (that is Exhibit E to the Sköld Declaration) to 3 of the maximum of 15 relevant U.S. dermatology companies, he was not saying will you invest in my future service stations, he was saying you should buy my formulation and formulation services. According to the evidence, Petitioner had already made product (see, e.g., Day Declaration at ¶5); he did not need investors to launch his

business. Collagenex bought the product and services. See, e.g., Letter of Intent; Day Declaration at ¶8.

Duffy v. Charles Schwab & Co., 54 USPQ2d 1820, 1821 (D.N.J. 200) is about another party seeking investors to launch its business – and says nothing about the current facts. In the *per curiam* decision of the Court of Appeals for the Second Circuit in American Express Co. v. Goetz, Goetz did not sell credit cards, and was not offering some service essential to making credit cards – he was selling his services in promoting American Express credit cards, and was not using the mark as a designation of the source of those services. 85 USPQ2d 1913 (2008)(slip op. at 8).

E. Developing a Product; Section IV.B. of Registrant's Opposition

The Day Declaration states at ¶5 that in "November and December 2001 Sköld transported samples of skin-care formulations labeled 'Restoraderm' to Collagenex." Collagenex was, as noted earlier in the declaration, located in Newtown, Pennsylvania. The Sköld Declaration is to the same effect (¶6). Thus, the characterization of "developing a product" made in Section IV.B. of Registrant's Opposition misrepresents the evidence. A product was developed and formulated, well prior to the dates set forth in Section III of Registrant's Opposition. Sköld as part of his services was offering to provide variations of his product, but a product was in hand.

Conclusion

In light of the above, and Petitioner's prior brief filed 15 May 2013, Petitioner submits that it is appropriate to grant Petitioner's motion for partial summary judgment.

Respectfully submitted,

Date: July 1, 2013

By: 

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Attachments:

- Exhibit 1: Registrant's Rule 26(a)(1) Disclosures;
- Exhibit 2: Registrant's First Amended Rule 26(a)(1) Disclosures (30 April 2012);
- Exhibit 3: Registrant's Response to Petitioner Sköld's First Set of Interrogatories and Requests for Production of Documents and Things (30 April 2012);
- Exhibit 4: Registrant's Response to Petitioner Sköld's Second Set of Interrogatories and Requests for Production of Documents and Things;
- Exhibit 5: Registrant's Supplemental Response to Petitioner Sköld's First and Second Sets of Interrogatories and Requests for Production of Documents and Things (24 April 2013).

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Thomas Sköld,)	
Petitioner,)	
)	
v.)	
)	Cancellation No. 92052897
Galderma Laboratories, Inc.,)	
Registrant)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply in Support of Petitioner's Cross Motion for Partial Summary Judgment and Motion to Strike was sent by email on this 1st day of July, 2013 to:

Jeff.Becker@haynesboone.com

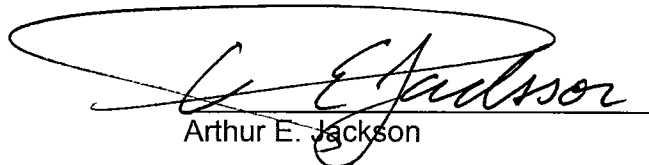

Arthur E. Jackson

Exhibit 1 – to Reply in Support of Petitioner's Cross Motion
(Registrant's Rule 26(A)(1) Disclosures)

Sköld v. Galderma
Cancellation No. 92052897
Re Registration Nos. 2985751 and 3394514

Thomas Sköld
Petitioner,

v.

Galderma Laboratories, Inc.
Registrant.

Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 26(a)(1) of the Federal Rules of Civil Procedure, Registrant Galderma Laboratories, Inc. by counsel hereby provides the following initial disclosures. Registrant reserves the right to supplement and/or amend these disclosures as may be appropriate during the course of discovery and as allowed by the Trademark Rules of Practice and Federal Rules of Civil Procedure.

- ## REGISTRANT'S RULE 26(A)(1) DISCLOSURES

- d. Correspondence between CollaGenex and Petitioner;
 - e. Agreements between Galderma and Petitioner; and
 - f. Agreements between CollaGenex and Petitioner.
3. Registrant has not determined the identity of any expert witnesses that it may use to support its claims and defenses.

Respectfully submitted,



Date: January 17, 2012

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D-2025090_3.DOC

Exhibit 2 – to Reply in Support of Petitioner's Cross Motion
(Registrant's First Amended Rule 26(A)(1) Disclosures)

Sköld v. Galderma
Cancellation No. 92052897
Re Registration Nos. 2985751 and 3394514

Subject Matter: Mr. Sköld has knowledge relevant to Petitioner's claims of priority and likelihood of confusion.

2. The following categories of documents are in Registrant's possession at its offices, other locations owned or controlled by Registrant, or the offices of its counsel and may be used to support Registrant's claims and defenses:
 - a. Documents regarding the registration of Registrant's RESTORADERM marks;
 - b. Documents regarding the use of Registrant's RESTORADERM marks;
 - c. Correspondence between Galderma and Petitioner;
 - d. Correspondence between CollaGenex and Petitioner;
 - e. Agreements between Galderma and Petitioner; and
 - f. Agreements between CollaGenex and Petitioner.
3. Registrant has not determined the identity of any expert witnesses that it may use to support its claims and defenses.

Respectfully submitted,



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D-2057868_1.DOC

Date: April 30, 2012

Thomas Sköld
Petitioner,

V.

Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

CERTIFICATE OF SERVICE

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~~Lisa N. Congleton~~

Exhibit 3 – to Reply in Support of Petitioner's Cross Motion
(Registrant's Response to Petitioner Sköld's First Set of Interrogatories and
Requests for Production of Documents and Things)

Sköld v. Galderma
Cancellation No. 92052897
Re Registration Nos. 2985751 and 3394514

GENERAL OBJECTIONS

1. Registrant objects to Petitioner's Interrogatories and Requests to the extent that they seek to impose obligations beyond those imposed by Rule 26 of the Federal Rules of Civil Procedure. In particular, Rule 26(b) limits the scope of discovery to "any matter, not privileged, which is relevant to the subject matter involved in the pending action."

2. Registrant objects to any specific Interrogatory or Request to the extent that it seeks information subject to (i) the attorney-client privilege, (ii) the attorney work product doctrine, (iii) the protection afforded consulting experts pursuant to Federal Rule of Civil Procedure 26(b)(4)(B), (iv) the self-critical analysis privilege, (v) the investigative privilege, (vi) the party communications privilege, (vii) the witness statement privilege, or (viii) any other privilege or protection afforded by state or federal law. To the extent that an Interrogatory or Request can be construed as seeking information subject to such privileges, or any other privilege afforded by law, Registrant hereby claims such privilege and/or invokes the attorney work product doctrine.

3. Registrant objects to any specific Interrogatory or Request to the extent it calls for information that is publicly available to Petitioner because such Interrogatory or Request is unduly burdensome, oppressive, and annoying since Petitioner has access to such information.

4. Registrant objects to the extent the Interrogatories and Requests seek information other than that which may be obtained through a reasonably diligent search of its records.

5. Registrant objects to each Interrogatory or Request to the extent that it seeks information not within Respondent's possession, custody, or control.

6. Registrant objects to the use of "all," "each," and the like in Petitioner's Interrogatories and Requests, to the extent same renders the Interrogatories and Requests overly broad and unduly burdensome. Unless otherwise indicated by objection, Registrant will provide information and documents that Registrant was able to locate as a result of a comprehensive search of Registrant's business records. However, where the

scope of information requested is unduly burdensome, Registrant will respond by representative information only, as sanctioned by the Board. To the extent that Registrant produces any such document, it does not concede that the document produced is relevant to this action. Respondent produces the documents without waiving or intending to waive any objection to competency, relevancy, or admissibility as evidence of any matter referred to or made the subject of any answer provided, including at the trial of this action.

7. Registrant objects to the Petitioner's definition of "identify," when used in reference to a natural individual, as including the individual's home address, on grounds that such information is not reasonably calculated to lead to the discovery of admissible evidence. Where Registrant has identified, and where it will identify, an individual, Registrant will provide that individual's business address only, if the individual has a known business address.

8. Registrant objects to Petitioner's definition of "identify" and "identification" when used with respect to a document for which Registrant claims privilege as overly broad, unduly burdensome, oppressive, not reasonably calculated to lead to the discovery of admissible evidence, and harassing.

9. Registrant expressly reserves the right to amend, supplement, or change its responses to Petitioner's Interrogatories and Requests with information learned in the course of further investigation and discovery.

10. The objections listed above are not intended to be exhaustive. Registrant objects to each of the prefatory statements, definitions, and instructions, and Petitioner's Interrogatories and Requests to the extent that they purport to impose obligations upon Registrant that exceed those required by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Title 37 of the Code of Federal Regulations, any order of the Trademark Trial and Appeal Board, or any other applicable law.

Registrant incorporates by reference to each and every Response to Petitioner's Interrogatories and Requests herein, the General Objections set forth above.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1:

Identify all documents upon which Registrant intends to rely in this proceeding.

Response:

Registrant objects to this Interrogatory under T.B.M.P. § 414(7) on the ground that a party is not obligated to specify the evidence or documents it intends to present in advance of trial. Registrant further objects to this Interrogatory on the ground that complete compliance with “all documents” is unduly burdensome.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 2:

Identify each person whom Registrant may call to testify on his behalf in this proceeding.

Response:

Registrant objects to this Interrogatory under T.B.M.P. § 414(7) on the ground that a party is not obligated to identify witnesses it may call to testify on its behalf.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 3:

Identify all persons having knowledge of the allegations and facts that you assert in response to these interrogatories, and describe the substance of those persons’ knowledge.

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with “all persons” is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 4:

Describe in detail how the term “Restoraderm” was first conceived of.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 5:

Describe each product that has been marketed under the mark “Restoraderm”.

Response:

Subject to and without waiving the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 6:

State the date of, and describe in detail the circumstances of, Registrant’s first use of the mark “Restoraderm” in commerce in connection with the sale, offering for sale, distribution, or advertising of a dermatology product.

Response:

Subject to and without waiving the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 7:

State the date of, and describe in detail the circumstances of, Registrant's first use of the mark "Cetaphil Restoraderm" in commerce in connection with the sale, offering for sale, distribution, or advertising of a dermatology product.

Response:

Subject to and without waiving the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 8:

Describe in detail all facts and identify all documents and things showing that the mark Restoraderm was irrevocably assigned in either the 2002 or 2004 Agreement, which facts, document or things are in addition to the 2002 Agreement and the 2004 Agreement themselves.

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 9:

Describe in detail all facts and identify all documents and things showing that the mark Restoraderm was assigned in either the 2002 Agreement or the 2004 Agreement, without contingency that the full measure of contemplated consideration being paid, which facts, document or things are in addition to the 2002 Agreement and the 2004 Agreement themselves.

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Request calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 10:

Identify the chief officer of Registrant in charge of making applications to the U.S. Food and Drug Administration seeking regulatory approval for drug compositions, therapeutic compositions, or the like (the “FDA Compliance Officer”).

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 11:

Describe in detail the basis, if any, by which the FDA Compliance Officer believes that each given product sold under the mark "Cetaphil Restoraderm" in the United States during 2011 or earlier is a "therapeutic skin care preparation" and/or provides a "treatment of skin disorders."

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 12:

Describe in detail the basis, if any, by which the FDA Compliance Officer believes that each given product sold under the mark "Cetaphil Restoraderm" in the United States during 2011 or earlier is sold as a "therapeutic skin care preparation" and/or sold to provide a "treatment of skin disorders."

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion. Registrant further objects that this Interrogatory is duplicative of Interrogatory No. 11 and it is therefore harassing.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 13:

Describe in detail the basis by which the FDA Compliance Officer believes that given each product sold under the mark “Cetaphil Restoraderm” in the United States during 2012 is a “therapeutic skin care preparation” and/or provides a “treatment of skin disorders.”

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 14:

Describe in detail the basis by which the FDA Compliance Officer believes that each given product sold under the mark “Restoraderm” or “Cetaphil Restoraderm” in the United States during 2012 is sold as a “therapeutic skin care preparation” and/or sold to provide a “treatment of skin disorders.”

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion. Registrant further objects that this Interrogatory is duplicative of Interrogatory No. 13 and it is therefore harassing.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 15:

Identify the chief officer of Registrant in charge of making marketing the product sold under the mark “Cetaphil Restoraderm” (the “Marketing Officer”).

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 16:

Describe in detail the basis by which the Marketing Officer believes that each given product sold under the mark “Restoraderm” or “Cetaphil Restoraderm” in the United States during 2011 or earlier is a “therapeutic skin care preparation” and/or provides a “treatment of skin disorders.”

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 17:

Describe in detail the basis by which the Marketing Officer believes that each given product sold under the mark "Restoraderm" or "Cetaphil Restoraderm" in the United States during 2011 or earlier is sold as a "therapeutic skin care preparation" and/or sold to provide a "treatment of skin disorders."

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion. Registrant further objects that this Interrogatory is duplicative of Interrogatory No. 16 and it is therefore harassing.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 18:

Describe in detail the basis by which the Marketing Officer believes that each given product sold under the mark "Restoraderm" or "Cetaphil Restoraderm" in the United States during 2012 is a "therapeutic skin care preparation" and/or provides a "treatment of skin disorders." Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 19:

Describe in detail the basis by which the Marketing Officer believes that each given product sold under the mark "Restoraderm" or "Cetaphil Restoraderm" in the United States during 2012 is sold as a "therapeutic skin care preparation" and/or sold to provide a "treatment of skin disorders."

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects that this Interrogatory is duplicative of Interrogatory No. 18 and it is therefore harassing. Registrant further objects to the extent that the Interrogatory calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 20:

Describe all facts and identify all documents and things relating to and showing Registrant's design or implementation of studies intended to support a New Drug Application under the U.S. Food and Drug Act, or to support a comparable regulatory approval (including without limitation DESI pending, OTC Monograph, or GRASE), for the marketing of any product sold in the U.S. in 2011 under the mark "Restoraderm" or "Cetaphil Restoraderm" for treatment of Eczema.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 21:

Describe all facts and identify all documents and things relating to and showing Registrant's design or implementation of studies initiated on or after January 1, 2007 intended to support a New Drug Application under the U.S. Food and Drug Act, or to support a comparable regulatory approval (including without limitation DESI pending, OTC Monograph, or GRASE), for the marketing of a product intended to be, or later elected to be, sold under the mark "Restoraderm" for "Cetaphil Restoraderm" or treatment of Eczema.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 22:

Describe all facts and identify all documents and things relating to and showing Registrant's design or implementation of studies initiated on or after January 1, 2007 intended to support a New Drug Application under the U.S. Food and Drug Act, or to support a comparable regulatory approval (including without limitation DESI pending, OTC Monograph, or GRASE), for the marketing of a product intended to be, or later elected to be, sold under the mark "Restoraderm" or "Cetaphil Restoraderm" for treatment of a skin disorder.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 23:

Describe all facts and identify all documents and things relating to Registrant’s decision to file for the application that matured to U.S. Reg. No. 3394514.

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 24:

Describe all products that are being sold in the United States, or in development for sale in the United States, under U.S. Reg. No. 2885751.

Response:

Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 25:

Describe all products that are being sold in the United States, or in development for sale in the United States, under U.S. Reg. No. 3394514.

Response:

Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 26:

Describe all facts and identify all documents and things relating to Galderma's decision that it could retain the Restoraderm trademark it nominally acquired from Collagenex.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Moreover, Registrant objects to this Interrogatory to the extent that it is premised upon certain factual and legal conclusions that are at issue in this Cancellation.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement

Interrogatory No. 27:

Describe all facts and identify all documents and things relating to Galderma's decision to relinquish the patent estate assigned to Sköld by the Assignment of Patents dated February 22, 2010 and the product identified for return to Sköld in the Jim Wallace email dated February 8, 2010.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 28:

In Petitioner's Response to Registrant's First Set of Interrogatories, Petitioner lays out his calculation of having received approximately 2.44 million dollars from Collagenex. Please describe in detail any further payments from Collagenex to Sköld not identified in Petitioner's Response to Registrant's First Set of Interrogatories.

Response:

Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 29:

Describe all facts and identify all documents and things relating to any efforts by Galderma to seek a partnership, collaboration, joint venture or the like with another pharmaceutical company (excluding Collagenex) that would use, or later elect to use, the mark Restoraderm.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement

Interrogatory No. 30:

Describe all facts and identify all documents and things relating to any inquiries to Galderma from third parties, including consumers, indicating or suggesting confusion between Registrant’s Mark and the technology and compositions that Petitioner terms RESTORADERM Technology or the these third parties associate with Petitioner.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 31:

Describe all facts and identify all documents and things relating to any inquiries to Galderma from third parties, including consumers, inquiring as to whether items marketed under the mark “Restoraderm” or “Cetaphil Restoraderm” are affiliated in any way with Petitioner.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 32:

Describe in detail all facts and identify all documents and things showing commercial or development activity by Registrant on RESTORADERM Technology that occurred on or after June 1, 2007.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 33:

Describe in detail all facts and identify all documents and things relating to Registrant's decision to use the mark "**DERMACONTROL**".

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 34:

Describe in detail all facts and identify all documents and things relating to any decision by Registrant to use the mark "**DERMACONTROL**" in place of "Restoraderm".

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

Interrogatory No. 34: [sic]

Describe in detail all facts and identify all documents and things relating to any decision by Registrant to discontinue, in the short term or the long term, the mark "Restoraderm".

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement.

RESPONSES TO REQUESTS FOR PRODUCTION

Request for Production No. 1:

All documents and things identified in Registrant's Initial Disclosures served in connection with this Cancellation not already produced.

Response:

Subject to and without waiving the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 2:

All documents and things not identified in Registrant's Initial Disclosures served in connection with this Cancellation, which nonetheless were reviewed or relied upon in preparing Registrant's Initial Disclosures.

Response:

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 3:

All documents and things identified in Registrant's responses to Petitioner's First Set of Interrogatories set forth above.

Response:

Subject to and without waiving the general objections and any objections made pertaining to any corresponding Interrogatory response, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 4:

All documents and things not identified in Registrant's responses to Petitioner's First Set of Interrogatories served in connection with this Cancellation, which nonetheless were reviewed or relied upon in preparing answers to said Interrogatories and/or which support Registrant's responses thereto.

Response:

Registrant objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request on the ground that complete compliance with "all documents and things" is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 5:

All documents Registrant intends to introduce into evidence in this proceeding.

Response:

Registrant objects to this Request under T.B.M.P. § 414(7) on the ground that a party is not obligated to specify the evidence or documents it intends to present in advance of trial. Registrant further objects to this Request on the ground that complete compliance with "all documents" is unduly burdensome.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 6:

All documents upon which Registrant intends to rely during the testimony period in support of Registrant's case.

Response:

Registrant objects to this Request under T.B.M.P. § 414(7) on the ground that a party is not obligated to specify the evidence or documents it intends to present in advance of trial. Registrant further objects to this Request on the ground that complete compliance with “all documents” is unduly burdensome.

Subject to and without waiving the foregoing and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 7:

All documents and things relating to each expert witness Registrant has engaged in connection with this proceeding, including but not limited to, resumes, curricula vitae, references, and promotional matter, and opinions, reports, exhibits, and communications concerning any issue presented or considered herein.

Response:

Registrant objects to this Request on the grounds that it is vague and ambiguous. Registrant further objects to this Request on the ground that complete compliance with “all documents and things” is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 8:

Any written report, memorandum, opinion, or other written documents and things that were prepared by any expert witness, regardless of whether Registrant presently intends to call such expert witness in this proceeding.

Response:

Registrant objects to this Request under T.B.M.P. § 401.03 on the ground that a party is not obligated to disclose information pertaining to non-testifying experts. Registrant further objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall provide an appropriate response as described in the Preliminary Statement

Request for Production No. 9:

All documents and things relating to communications between Registrant and any third party, including consumers, indicating or suggesting confusion between Registrant's Mark and the technology and compositions that Petitioner terms RESTORADERM Technology or that the these third parties associate with Petitioner.

Response:

Registrant objects to this Request on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 10:

All documents and things relating to communications between Registrant and any third party, including consumers, inquiring as to whether items marketed under the mark "Restoraderm" or "Cetaphil Restoraderm" are affiliated in any way with Petitioner.

Response:

Registrant objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 11:

All documents and things showing use of the term Restoraderm in commerce by Registrant in connection with the sale, offer for sale, and/or distribution of any product or service prior to February 11, 2002, and between then and February 28, 2002.

Response:

Registrant objects to this Request on the ground that complete compliance with “all documents and things” is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 12:

All documents and things relating to the conception of the term “Restoraderm”.

Response:

Subject to and without waiving the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 13:

All documents and things relating to the goods and services that are currently being marketed by Registrant under or in connection with the term “Restoraderm”.

Response:

Registrant objects to this Request on the ground that complete compliance with “all documents and things” is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 14:

All documents and things relating to Registrant’s first use of “Restoraderm” in commerce in connection with a dermatology product.

Response:

Registrant objects to this Request on the ground that complete compliance with “all documents and things” is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 15:

All drafts and execution copies of the 2002 Agreement and the 2004 Agreement, including exhibits thereto.

Response:

Registrant objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 16:

All documents and things relating to Registrant's return to Sköld of "Purchased Assets" as defined in §2.1 of the 2004 Agreement.

Response:

Registrant objects to this Request on the grounds that it is vague and ambiguous. Registrant further objects to this Request on the ground that complete compliance with "all documents and things" is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to the extent that the Request calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Request for Production No. 17:

Each United States patent and patent application assigned or licensed to Registrant that has claims, or if an application has or could have claims, covering a product that Registrant markets, had marketed or intends to market in the United States under the mark "Restoraderm" or "Cetaphil Restoraderm".

Response:

Registrant objects to this Request on the grounds that it is vague and ambiguous. Registrant further objects to the extent that the Request calls for a legal conclusion. Moreover, Registrant objects to the extent this Request seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant shall produce appropriate documents as described in the Preliminary Statement.

Respectfully submitted,



Lisa N. Congleton, Esq.

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Date: April 30, 2012

Exhibit 4 – to Reply in Support of Petitioner's Cross Motion

(Registrant's Response to Petitioner Sköld's Second Set of Interrogatories and
Requests for Production of Documents and Things)

Sköld v. Galderma
Cancellation No. 92052897
Re Registration Nos. 2985751 and 3394514

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Thomas Sköld
Petitioner,

v.

Galderma Laboratories, Inc.
Registrant.

§
§
§
§
§
§

Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

**REGISTRANT'S RESPONSE TO PETITIONER
SKÖLD'S SECOND SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to the provisions of: (a) 37 C.F.R. §§ 2.116(a) and 2.120, Rule 33 of the Federal Rules of Civil Procedure, T.B.M.P. §§ 403.02 and 408.01; and (b) 37 C.F.R. § 2.120, Rule 34 of the Federal Rules of Civil Procedure and T.B.M.P. §§ 403.03 and 408.01, Galderma Laboratories, Inc. ("Registrant") herewith responds to Thomas Sköld's ("Petitioner") Second Set of Interrogatories ("Interrogatory" or "Interrogatories") and Requests for Production of Documents and Things ("Request" or "Requests") as follows:

GENERAL OBJECTIONS

1. Registrant objects to Petitioner's Interrogatories and Requests to the extent that they seek to impose obligations beyond those imposed by Rule 26 of the Federal Rules of Civil Procedure. In particular, Rule 26(b) limits the scope of discovery to "any matter, not privileged, which is relevant to the subject matter involved in the pending action."

2. Registrant objects to any specific Interrogatory or Request to the extent that it seeks information subject to (i) the attorney-client privilege, (ii) the attorney work product doctrine, (iii) the protection afforded consulting experts pursuant to Federal Rule of Civil Procedure 26(b)(4)(B), (iv) the self-critical analysis privilege, (v) the investigative privilege, (vi) the party communications privilege, (vii) the witness statement privilege, or (viii) any other privilege or protection afforded by state or federal law. To the extent that an Interrogatory or Request can be construed as seeking information subject to such privileges, or any other privilege afforded by law, Registrant hereby claims such privilege and/or invokes the attorney work product doctrine.

3. Registrant objects to any specific Interrogatory or Request to the extent it calls for information that is publicly available to Petitioner because such Interrogatory or Request is unduly burdensome, oppressive, and annoying since Petitioner has access to such information.

4. Registrant objects to any specific Interrogatory or Request to the extent that it seeks information other than that which may be obtained through a reasonably diligent search of its records.

5. Registrant objects to each Interrogatory or Request to the extent that it seeks information not within Registrant's possession, custody, or control.

6. Registrant objects to the use of "all," "each," and the like in Petitioner's Interrogatories and Requests, to the extent same renders the Interrogatories and Requests overly broad and unduly burdensome. Unless otherwise indicated by objection, Registrant will provide information and documents that Registrant was able to locate as a result of a comprehensive search of Registrant's business records. However, where the scope of information requested is unduly burdensome, Registrant will respond by representative information only, as sanctioned by the Board. To the extent that Registrant produces any such document, it does not concede that the document produced is relevant to this action. Respondent produces the documents without waiving or intending to waive any objection to competency, relevancy, or admissibility as evidence of any matter referred to or made the subject of any answer provided, including at the trial of this action.

7. Registrant objects to the Petitioner's definition of "identify," when used in reference to a natural individual, as including the individual's home address, on grounds that such information is not reasonably calculated to lead to the discovery of admissible evidence. Where Registrant has identified, and where it will identify, an individual, Registrant will provide that individual's business address only, if the individual has a known business address.

8. Registrant objects to Petitioner's definition of "identify" and "identification" when used with respect to a document for which Registrant claims privilege as overly broad, unduly burdensome, oppressive, not reasonably calculated to lead to the discovery of admissible evidence, and harassing.

9. Registrant objects to any specific Interrogatory or Request to the extent that it seeks information pertaining to Registrant's non-use of, or intent not to resume use of, the trademark RESTORADERM. The Board's order of November 8, 2012, dismissing with prejudice Petitioner's claim of abandonment of Registrant's U.S. Trademark Registration No. 2,985,751, conclusively forecloses an argument that the information objected to is either relevant to this matter or reasonably calculated to lead to the discovery of admissible evidence.

10. Registrant objects to Instruction No. 3 to the extent that it purports to impose obligations upon Registrant that exceed those required by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Title 37 of the Code of Federal Regulations, any order of the Trademark Trial and Appeal Board, or any other applicable law, particularly because it cites Rules 4:17-7 and 4:17-8, which do not

refer to any known rules of procedure or evidence applicable to Board proceedings or in federal litigation as governing Registrant's duties and obligations relating to discovery responses.

11. Registrant expressly reserves the right to amend, supplement, or change its responses and objections to Petitioner's Interrogatories and Requests with information learned in the course of further investigation and discovery.

12. The objections listed above are not intended to be exhaustive. Registrant objects to each of the prefatory statements, definitions, and instructions, and Petitioner's Interrogatories and Requests to the extent that they purport to impose obligations upon Registrant that exceed those required by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Title 37 of the Code of Federal Regulations, any order of the Trademark Trial and Appeal Board, or any other applicable law.

Registrant incorporates by reference to each and every Response to Petitioner's Interrogatories and Requests herein, the General Objections set forth above.

RESPONSES TO INTERROGATORIES

Interrogatory No. 36:

Describe in detail all facts and identify all documents and things showing that Registrant used the term Restoraderm in commerce in connection with any product prior to February 28, 2002.

Response:

Subject to and without waiving the General Objections, Registrant responds as follows: None, but discovery is ongoing, and Registrant reserves the right to amend, supplement, or change its response to this Interrogatory at a later date.

Interrogatory No. 37:

Describe in detail all facts and identify all documents and things showing that Registrant used the term Restoraderm in commerce in connection with any product prior to February 11, 2002.

Response:

Registrant objects that this Interrogatory is duplicative of Interrogatory No. 36, and it is, therefore, harassing.

Interrogatory No. 38:

Describe in detail all facts and identify all documents and things showing that Registrant used the term Restoraderm in commerce in connection with any product prior to September 11, 2001.

Response:

Registrant objects that this Interrogatory is duplicative of Interrogatory No. 36, and it is, therefore, harassing.

Interrogatory No. 39:

Describe in detail all facts and identify all documents and things showing that Registrant has paid Petitioner any or all of the \$133,000 dollar payments contemplated in Section 4.1(b) of the 2004 Agreement for Product demonstrating clinical batch stability.

Response:

Registrant objects that this Interrogatory is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence pertaining to Petitioner's only remaining claim of priority and likelihood of confusion, following the Board's Orders of October 13, 2011 and November 8, 2012. Petitioner himself makes no allegations in his Amended Petition pertaining to the information this Interrogatory calls for or its relevance to Petitioner's claim of priority and likelihood of confusion.

Interrogatory No. 40:

Describe in detail all facts and identify all documents and things showing that Registrant has paid Petitioner any or all of the \$134,000 dollar payments contemplated in Section 4.1(c) of the 2004 Agreement for commercial manufacturing of three batches of a given Product.

Response:

Registrant objects that this Interrogatory is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence pertaining to Petitioner's only remaining claim of priority and likelihood of confusion, following the Board's Orders of October 13, 2011 and November 8, 2012. Petitioner himself makes no allegations in his Amended Petition pertaining to the information this Interrogatory calls for or its relevance to Petitioner's claim of priority and likelihood of confusion.

Interrogatory No. 41:

Describe in detail all facts and identify all documents and things showing that Registrant terminated the 2004 Agreement other than pursuant to Section 8.5(b) thereof, with such description explaining any apparent or clear inconsistency with Exhibit 5 to Petitioner's Amended Complaint [sic].

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Section 8.5(b) relates to the effect of termination, not the grounds pursuant to which Registrant was permitted to terminate the 2004 Agreement. Thus, the request that Registrant explain any apparent or clear inconsistency between Registrant's description of facts showing that it terminated the 2004 Agreement other than pursuant to Section 8.5(b) thereof and Exhibit 5 to Petitioner's Amended Petition is so vague and unclear that Registrant is unable to identify what information is requested.

Interrogatory No. 42:

Describe in detail all facts and identify all documents and things showing that Registrant has, on or after January 1, 2009, conducted a study of any product contemplated to be marketed under the mark "Restoraderm" or "Cetaphil Restoraderm" for use as a vehicle for delivering across the skin an active pharmaceutical substance.

Response:

Registrant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence as it calls for information and documents that do not pertain to Petitioner's only remaining claim.

Interrogatory No. 43:

Describe in detail all facts and identify all documents and things showing that Registrant has conducted a Phase II and/or Phase III study or comparably rigorous studies in support a New Drug Application under the U.S. Food and Drug Act, or in support a comparable regulatory approval (including if relevant and without limitation DESI pending, OTC Monograph, or GRASE), showing that any product sold or intended to be sold in the U.S. in 2009 or later under the mark “Restoraderm” or “Cetaphil Restoraderm” provides a treatment for Eczema.

Response:

Registrant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence as it calls for information and documents that do not pertain to Petitioner’s only remaining claim.

Interrogatory No. 44:

Describe in detail all facts and identify all documents and things showing that Registrant has conducted a Phase II and/or Phase III study or comparably rigorous studies in support a New Drug Application under the U.S. Food and Drug Act, or in support a comparable regulatory approval (including if relevant and without limitation DESI pending, OTC Monograph, or GRASE), showing that any product sold or intended to be sold in the U.S. in 2009 or later under the mark “Restoraderm” or “Cetaphil Restoraderm” provides a treatment of a skin disorder recognized as a treatment target by the U.S. Food and Drug Administration.

Response:

Registrant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence as it calls for information and documents that do not pertain to Petitioner’s only remaining claim.

Interrogatory No. 45:

Describe in detail all facts and identify all documents and things showing that the FDA Compliance Officer (as defined in the Petitioner’s First Set of Interrogatories), or his predecessor in that position, has represented to the U.S. Food and Drug Administration that a product sold under the mark “Cetaphil Restoraderm” in the United States during 2012 or earlier is a “therapeutic skin care preparation” and/or provides a “treatment of skin disorders.”

Response:

Registrant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence as it calls for information and documents that do not pertain to Petitioner's only remaining claim.

Interrogatory No. 46:

Describe in detail all facts and identify all documents and things showing that the FDA Compliance Officer (as defined in the Petitioner's First Set of Interrogatories), or his predecessor in that position, intends to represent to the U.S. Food and Drug Administration that a product sold under the mark "Cetaphil Restoraderm" in the United States during 2012 or earlier is a "therapeutic skin care preparation" and/or provides a "treatment of skin disorders."

Response:

Registrant objects to this Interrogatory on the grounds that it seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence as it calls for information and documents that do not pertain to Petitioner's only remaining claim.

Interrogatory No. 47:

Describe in detail all facts and identify all documents and things showing that any document represented as originating from Registrant (including the Press Release that is Exhibit 1 to the Amended Petition for Cancellation), or as sent to Registrant, and provided to Registrant with the Petition for Cancellation, the Amended Petition for Cancellation, the Petitioner's Initial Disclosure, or the Petitioner's First Updated Initial Disclosure, is other than a true and correct copy.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous, particularly with respect to the meaning of "any document represented as originating from Registrant . . . or as sent to Registrant."

Registrant further objects to this Interrogatory on the grounds that compliance with it is unduly burdensome, oppressive, and harassing because Petitioner apparently seeks to authenticate copies of certain documents by having Registrant bear the burden of identifying the copies of documents sought to be authenticated and then disproving the authenticity of any such copies that are not true and correct, rather than simply seeking to authenticate copies of such documents pursuant to the procedure specified for this purpose in Federal Rule of Civil Procedure 36(a).

Interrogatory No. 48:

Please identify each document represented as originating from Registrant (including the Press Release that is Exhibit 1 to the Amended Petition for Cancellation), or as sent to Registrant, and provided to Registrant with the Petition for Cancellation, the Amended Petition for Cancellation, the Petitioner's Initial Disclosure, or the Petitioner's First Updated Initial Disclosure, that is a true and correct copy.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous, particularly with respect to the meaning of "any document represented as originating from Registrant . . . or as sent to Registrant."

Registrant further objects to this Interrogatory on the grounds that compliance with it is unduly burdensome, oppressive, and harassing because Petitioner apparently seeks to authenticate copies of certain documents by having Registrant bear the burden of identifying the copies of such documents sought to be authenticated and then disproving the authenticity of any such copies that are not true and correct, rather than simply seeking to authenticate copies of such documents pursuant to the procedure specified for this purpose in Federal Rule of Civil Procedure 36(a).

RESPONSES TO REQUESTS FOR PRODUCTION

Request for production No. 18:

All documents and things identified in Registrant's responses to Petitioner's Second Set of Interrogatories set forth above.

Response:

Subject to and without waiving the General Objections, Registrant responds as follows: No documents or things were identified in Registrant's responses to Petitioner's Second Set of Interrogatories.

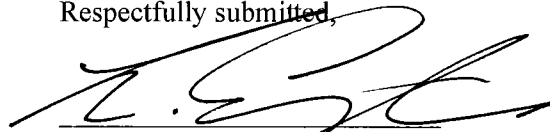
Request for production No. 19:

All documents and things not identified in Registrant's responses to Petitioner's Second Set of Interrogatories served in connection with this Cancellation, which nonetheless were reviewed or relied upon in preparing answers to said Interrogatories and/or which support Registrant's responses thereto.

Response:

Subject to and without waiving the foregoing objections and the General Objections, Registrant responds as follows: The following documents and things, which were not identified in Registrant's responses to Petitioner's Second Set of Interrogatories, but which were nonetheless reviewed or relied upon in preparing answers to said Interrogatories and/or which support Registrant's responses thereto include the following: (i) the Boards Orders of October 13, 2011 and November 8, 2012, (ii) Petitioner's Amended Petition, (iii) the 2004 Agreement as that term is defined in Petitioner's Second Set of Interrogatories and Requests for Production of Documents and Things, and (iv) Petitioner's letter, dated January 29, 2008, to CollaGenex, all of which are within Petitioner's possession, custody, or control.

Respectfully submitted,



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Date: November 30, 2012

D-2118990_4

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Thomas Sköld
Petitioner,

v.

Galderma Laboratories, Inc.
Registrant.

§
§
§
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§

Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of November, 2012, the foregoing *Registrant's Response to Petitioner Sköld's Second Set of Interrogatories and Request for Production of Documents and Things* was served on Petitioner's counsel of record, via email to the following:

Arthur E. Jackson
Moser IP Law Group
artjcksn@gmail.com
docketing@mtiplaw.com

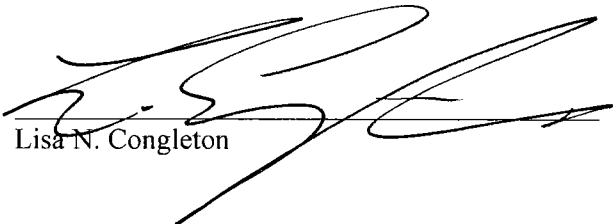

Lisa N. Congleton

Exhibit 5 – to Reply in Support of Petitioner's Cross Motion

(Registrant's Supplemental Response to Petitioner Sköld's First and Second Sets of
Interrogatories and Requests for Production of Documents and Things)

Sköld v. Galderma
Cancellation No. 92052897
Re Registration Nos. 2985751 and 3394514

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Thomas Sköld
Petitioner,

v.

Galderma Laboratories, Inc.
Registrant.

§
§
§
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§

Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

**REGISTRANT'S SUPPLEMENTAL RESPONSE TO PETITIONER
SKÖLD'S FIRST AND SECOND SETS OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to the provisions of: (a) 37 C.F.R. §§ 2.116(a) and 2.120, Rule 33 of the Federal Rules of Civil Procedure, T.B.M.P. §§ 403.02 and 408.01; and (b) 37 C.F.R. §§ 2.120, Rule 34 of the Federal Rules of Civil Procedure and T.B.M.P. §§ 403.03 and 408.01, Galderma Laboratories, Inc. ("Registrant") herewith responds to Thomas Sköld's ("Petitioner") First and Second Sets of Interrogatories ("Interrogatory" or "Interrogatories") and Requests for Production of Documents and Things ("Request" or "Requests") as follows:

GENERAL OBJECTIONS

1. Registrant objects to Petitioner's Interrogatories and Requests to the extent that they seek to impose obligations beyond those imposed by Rule 26 of the Federal Rules of Civil Procedure. In particular, Rule 26(b) limits the scope of discovery to "any matter, not privileged, which is relevant to the subject matter involved in the pending action."

2. Registrant objects to any specific Interrogatory or Request to the extent that it seeks information subject to (i) the attorney-client privilege, (ii) the attorney work product doctrine, (iii) the protection afforded consulting experts pursuant to Federal Rule of Civil Procedure 26(b)(4)(B), (iv) the self-critical analysis privilege, (v) the investigative privilege, (vi) the party communications privilege, (vii) the witness statement privilege, or (viii) any other privilege or protection afforded by state or federal law. To the extent that an Interrogatory or Request can be construed as seeking information subject to such privileges, or any other privilege afforded by law, Registrant hereby claims such privilege and/or invokes the attorney work product doctrine.

3. Registrant objects to any specific Interrogatory or Request to the extent it calls for information that is publicly available to Petitioner because such Interrogatory or Request is unduly burdensome, oppressive, and annoying since Petitioner has access to such information.

4. Registrant objects to any specific Interrogatory or Request to the extent that it seeks information other than that which may be obtained through a reasonably diligent search of its records.

5. Registrant objects to each Interrogatory or Request to the extent that it seeks information not within Registrant's possession, custody, or control.

6. Registrant objects to the use of "all," "each," and the like in Petitioner's Interrogatories and Requests, to the extent same renders the Interrogatories and Requests overly broad and unduly burdensome. Unless otherwise indicated by objection, Registrant will provide information and documents that Registrant was able to locate as a result of a comprehensive search of Registrant's business records. However, where the scope of information requested is unduly burdensome, Registrant will respond by representative information only, as sanctioned by the Board. To the extent that Registrant produces any such document, it does not concede that the document produced is relevant to this action. Respondent produces the documents without waiving or intending to waive any objection to competency, relevancy, or admissibility as evidence of any matter referred to or made the subject of any answer provided, including at the trial of this action.

7. Registrant objects to the Petitioner's definition of "identify," when used in reference to a natural individual, as including the individual's home address, on grounds that such information is not reasonably calculated to lead to the discovery of admissible evidence. Where Registrant has identified, and where it will identify, an individual, Registrant will provide that individual's business address only, if the individual has a known business address.

8. Registrant objects to Petitioner's definition of "identify" and "identification" when used with respect to a document for which Registrant claims privilege as overly broad, unduly burdensome, oppressive, not reasonably calculated to lead to the discovery of admissible evidence, and harassing.

9. Registrant objects to any specific Interrogatory or Request to the extent that it seeks information pertaining to Registrant's non-use of, or intent not to resume use of, the trademark RESTORADERM. The Board's order of November 8, 2012, dismissing with prejudice Petitioner's claim of abandonment of Registrant's U.S. Trademark Registration No. 2,985,751, conclusively forecloses an argument that the information objected to is either relevant to this matter or reasonably calculated to lead to the discovery of admissible evidence.

10. Registrant objects to Instruction No. 3 to the extent that it purports to impose obligations upon Registrant that exceed those required by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Title 37 of the Code of Federal Regulations, any order of the Trademark Trial and Appeal Board, or any other applicable law, particularly because it cites Rules 4:17-7 and 4:17-8, which do not

refer to any known rules of procedure or evidence applicable to Board proceedings or in federal litigation as governing Registrant's duties and obligations relating to discovery responses.

11. Registrant objects to Definition Nos. 1 and No. 2, defining the terms "2002 Agreement" and "2004 Agreement," respectively, as vague and ambiguous as the defined terms refer to documents not identified with specificity. In this regard, Registrant notes that, while Registrant is aware of a 2002 agreement entitled "Co-Operation, Development and Licensing Agreement" and a 2004 agreement entitled "Asset Purchase and Product Development Agreement," the parties have not yet stipulated that a particular version or copy of each such agreement is true and correct or that the parties' references to the "2002 Agreement" or the "2004 Agreement" identify such true and correct copies of the originals. Subject to and without waiving the foregoing objection, Registrant states that, for purposes of Registrant's responses herein, Registrant relies upon documents found in its own records, including an agreement entitled "Co-Operation, Development and Licensing Agreement" dated February 11, 2002 and an agreement entitled "Asset Purchase and Product Development Agreement" dated August 19, 2004, and refers to them as Petitioner does as the "2002 Agreement" and the "2004 Agreement," respectively.

12. Registrant expressly reserves the right to amend, supplement, or change its responses and objections to Petitioner's Interrogatories and Requests with information learned in the course of further investigation and discovery.

13. The objections listed above are not intended to be exhaustive. Registrant objects to each of the prefatory statements, definitions, and instructions, and Petitioner's Interrogatories and Requests to the extent that they purport to impose obligations upon Registrant that exceed those required by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Title 37 of the Code of Federal Regulations, any order of the Trademark Trial and Appeal Board, or any other applicable law.

Registrant incorporates by reference to each and every Response to Petitioner's Interrogatories and Requests herein, the General Objections set forth above.

RESPONSES TO INTERROGATORIES

Interrogatory No. 4:

Describe in detail how the term “Restoraderm” was first conceived of.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant responds as follows. Registrant has no knowledge regarding how the term “Restoraderm” was first conceived of.

Interrogatory No. 5:

Describe each product that has been marketed under the mark “Restoraderm”.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous, especially with respect to the meaning of the term “marketed.” Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant responds as follows. Registrant advertises, offers for sale, and sells two RESTORADERM-branded products in the United States in retail stores nationwide: RESTORADERM Skin Restoring Body Wash and RESTORADERM Skin Restoring Moisturizer. The products were specifically designed to work together as a daily regimen to provide continuous relief for those struggling with atopic dermatitis and/or eczema-prone skin.

Interrogatory No. 6:

State the date of, and describe in detail the circumstances of, Registrant's first use of the mark "Restoraderm" in commerce in connection with the sale, offering for sale, distribution, or advertising of a dermatology product.

Response:

Subject to and without waiving the general objections, Registrant responds as follow. Registrant began using the mark "Restoraderm" in commerce in connection with the sale, offering for sale, distribution, or advertising of a dermatology product at least as early as May 27, 2005. Additional details regarding the circumstances of such first use can be found in the Statement of Use filed by CollaGenex Pharmaceuticals, Inc. on June 6, 2005 in connection with U.S. Trademark Registration No. 2,985,751, which is of record in this proceeding pursuant to 37 C.F.R. 2.122(b).

Interrogatory No. 7:

State the date of, and describe in detail the circumstances of, Registrant's first use of the mark "Cetaphil Restoraderm" in commerce in connection with the sale, offering for sale, distribution, or advertising of a dermatology product.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant specifically objects that the phrase "the mark 'Cetaphil Restoraderm'" is vague and ambiguous.

Subject to and without waiving the foregoing objections and the general objections, Registrant responds as follows. Registrant began using the mark "Cetaphil Restoraderm" in commerce in connection with the sale, offering for sale, distribution, or advertising of a dermatological product at least as early as January 2010, as described in the Declaration of Cindy Kee filed in support of Registrant's Motion for Summary Judgment on April 27, 2012.

Interrogatory No. 8:

Describe in detail all facts and identify all documents and things showing that the mark Restoraderm was irrevocably assigned in either the 2002 or 2004 Agreement, which facts, document or things are in addition to the 2002 Agreement and the 2004 Agreement themselves.

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Interrogatory calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections, Registrant responds as follows. Petitioner’s documents SKOLD-000775 – SKOLD-000810 and an email from Petitioner dated August 18, 2004, which Petitioner produced to Registrant in connection with this proceeding, evidence that the parties intentionally excluded the RESTORADERM trademark from the 2004 Agreement and that the parties decided to do so because both parties explicitly acknowledged that CollaGenex had always owned the RESTORADERM trademark and, therefore, there was no need for CollaGenex to purchase the RESTORADERM trademark from Petitioner.

Further, the behavior of, and correspondence between, the parties beginning in late 2001 and extending through to the initiation of the current proceeding supports Registrant’s allegations that, pursuant to the 2002 Agreement, all trademark rights in the RESTORADERM mark arising before or after the execution the 2002 Agreement were and would thereafter be owned solely by CollaGenex. Such behavior is evidenced by numerous documents Petitioner has produced. In this regard, Registrant reiterates its objection that compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome.

Interrogatory No. 9:

Describe in detail all facts and identify all documents and things showing that the mark Restoraderm was assigned in either the 2002 Agreement or the 2004 Agreement, without contingency that the full measure of contemplated consideration being paid, which facts, document or things are in addition to the 2002 Agreement and the 2004 Agreement themselves.

Response:

Registrant objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Registrant further objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, Registrant objects to the extent that the Request calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the general objections Registrant responds as follows. Facts responsive to this Interrogatory No. 9 are encompassed in Registrant’s response to Interrogatory No. 8.

Interrogatory No. 26:

Describe all facts and identify all documents and things relating to Galderma’s decision that it could retain the Restoraderm trademark it nominally acquired from CollaGenex.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Moreover, Registrant objects to this Interrogatory to the extent that it is premised upon certain factual and legal conclusions that are at issue in this Cancellation. Registrant specifically objects to the use of the term “nominally” to describe Registrant’s acquisition of the RESTORADERM trademark, and the use of the phrase “decision that it

could retain the Restoraderm trademark” to characterize the circumstances surrounding Registrant’s acquisition and ownership of the RESTORADERM trademark.

As discussed by counsel for the parties, Registrant responds to this Interrogatory No. 26 based on its understanding that Interrogatory No. 26 pertains generally to the circumstances surrounding Registrant’s acquisition and ownership of the RESTORADERM trademark.

Subject to and without waiving the foregoing objections and the general objections, Registrant responds as follows. The 2002 Agreement between CollaGenex and Petitioner stated that CollaGenex was the sole owner of the trademark RESTORADERM during the term of the 2002 Agreement and thereafter, thereby negating any need for Registrant to make a decision regarding the retention of the trademark RESTORADERM.

Interrogatory No. 27:

Describe all facts and identify all documents and things relating to Galderma’s decision to relinquish the patent estate assigned to Sköld by the Assignment of Patents dated February 22, 2010 and the product identified for return to Sköld in the Jim Wallace email dated February 8, 2010.

Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant specifically objects that the documents referred to as “Assignment of Patents dated February 22, 2010” and “Jim Wallace email dated February 8, 2010” are not identified with specificity.

Registrant further objects to this Interrogatory on the ground that complete compliance with “all facts and . . . all documents and things” is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant responds as follows. As of February 22, 2010, it was Registrant’s understanding that the patent estate identified in the Assignment of Patents entered into between Registrant and Petitioner dated as of

February 22, 2010 was among the assets purchased pursuant to the 2004 Agreement. Following Registrant's termination of the 2004 Agreement, Registrant believed that paragraph 8.5(b) of the 2004 Agreement required it to assign the patent estate to Petitioner.

Interrogatory No. 30:

Describe all facts and identify all documents and things relating to any inquiries to Galderma from third parties, including consumers, indicating or suggesting confusion between Registrant's Mark and the technology and compositions that Petitioner terms RESTORADERM Technology or the these third parties associate with Petitioner.


Response:

Registrant objects to this Interrogatory on the grounds that it is vague and ambiguous. Registrant further objects to this Interrogatory on the ground that complete compliance with "all facts and . . . all documents and things" is overly broad and unduly burdensome. Moreover, Registrant objects to the extent this Interrogatory seeks information that is neither relevant to this matter, nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the general objections, Registrant responds as follows. Registrant is aware of no facts, documents, or things responsive to this Interrogatory No. 30.

Date: April 24, 2013

Respectfully submitted,



Jeffrey M. Becker, Esq.

Lisa N. Congleton, Esq.

Attorneys for Registrant

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Dallas, Texas 75219

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VERIFICATION

I hereby swear that I have reviewed the above and foregoing *Registrant's Supplemental Response to Petitioner Sköld's First and Second Sets of Interrogatories and Requests for Production of Documents and Things*, I have personal knowledge of the information provided in these requests, and I believe the answers are true and correct to the best of my knowledge.

Art Clapp
Director of Business Development of
Galderma Laboratories, L.P.

Sworn to and subscribed before me on this _____ day of April, 2013.

Notary Public

Printed Name of Notary
Commission Expires _____

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Thomas Sköld
Petitioner,

v.

Galderma Laboratories, Inc.
Registrant.

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Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of April, 2013, the foregoing *Registrant's Supplemental Response to Petitioner Sköld's First and Second Sets of Interrogatories and Request for Production of Documents and Things* was served on Petitioner's counsel of record, via email to the following:

Arthur E. Jackson
Moser IP Law Group
artjcksn@gmail.com
docketing@mtiplaw.com



Lisa N. Congleton